

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PEDRO RAMIREZ, JR., Individually and §
on Behalf of All Others Similarly Situated §
Plaintiff, §

Case No. 3:16-cv-3111-K

v. §

EXXON MOBIL CORPORATION, §
REX W. TILLERSON, ANDREW P. §
SWIGER and JEFFREY J. WOODBURY §

Defendants. §
§

DEFENDANTS' SUBMISSION CONCERNING LEAD PLAINTIFF MOTION

Defendants ExxonMobil Corporation, Rex W. Tillerson, Andrew P. Swiger, and Jeffrey J. Woodbury respectfully make this submission concerning the motion for appointment of lead plaintiff and lead counsel filed by Greater Pennsylvania Carpenters Pension Fund on January 6, 2017 (ECF No. 25).

Defendants take no position on the present motion. Defendants reserve all rights to challenge any proposed class representative at the class certification stage of these proceedings or at a later stage of these proceedings on a more developed record. As the courts have held, findings at the lead plaintiff stage do not preclude later challenges under Federal Rule of Civil Procedure 23, including but not limited to challenges to the typicality or adequacy of a proffered class representative. *See Richard NMI Bell v. Ascendant Sols., Inc.*, 2002 WL 638571, at *2 (N.D. Tex. Apr. 17, 2002) (noting that “the Court’s finding is without prejudice to later typicality or adequacy challenges at the class certification stage”); *see also Ellenburg v. JA Solar Holdings Co. Ltd.*, 262 F.R.D. 262, 267 (S.D.N.Y. 2009) (noting that “defendants may of course challenge at the class certification stage whether each of the requirements of Rule 23 has been

established”); *Koppel v. 4987 Corp.*, 1999 WL 608783, at *8 (S.D.N.Y. Aug. 11, 1999) (noting that a finding of adequacy for purposes of appointment as Lead Plaintiff “does not prejudice the defendants’ capacity to contest plaintiff’s adequacy on a motion for class certification”); *Fischler v. AMSouth Bancorporation*, 1997 WL 118429, at *2 (M.D. Fla. Feb. 6, 1997) (noting that “the determination of lead plaintiff and lead counsel at this stage does not preclude revisiting the issue upon consideration of a motion for class certification”).

Dated: January 27, 2017

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on January 27, 2017.

By: /s/ Daniel J. Kramer
Daniel J. Kramer